

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOYCE A. SCHWEI, on behalf of  
THOMAS SCHWEI,

Plaintiff(s),

v.

CAROLYN W. COLVIN,

Defendant(s).

Case No. 2:15-CV-1086 JCM (NJK)

ORDER

Presently before the court is Magistrate Judge Koppe's report and recommendation ("R&R"), regarding plaintiff Joyce Schwei's motion to remand to the Social Security Administration (ECF No. 17) and defendant Carolyn Colvin's (the "commissioner") crossmotion to affirm (ECF No. 19). (ECF No. 20). No objections have been filed, and the deadline for filing objections has now passed.

On February 14, 2012, and March 16, 2012, Mr. Schwei filed applications for a period of disability and disability insurance benefits and supplemental security income, alleging that he became disabled on August 15, 2007. The commissioner denied Mr. Schwei's claims on initial determination on July 3, 2012, and on reconsideration on November 19, 2012.

On November 28, 2012, Mr. Schwei filed a request for a hearing before an administrative law judge ("ALJ").

On May 4, 2013, Mr. Schwei passed away and on May 13, 2013, Mrs. Schwei ("plaintiff") substituted into the case in his place.

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1           On August 12, 2013, the ALJ overseeing the case found Mr. Schwei not disabled as defined  
2 by the Social Security Act. The ALJ's decision became final on April 15, 2015, when the appeals  
3 council denied plaintiff's request for review.

4           On June 8, 2015, plaintiff commenced the underlying action seeking judicial review of the  
5 ALJ's decision pursuant to 42 U.S.C. § 405(g), which was amended on June 23, 2015. (ECF Nos.  
6 1, 4). On August 24, 2015, the commissioner filed an answer. (ECF No. 11).

7           On November 6, 2015, plaintiff filed a motion to remand the action. (ECF No. 17). On  
8 December 7, 2015, the commissioner responded. (ECF No. 18). On that same day, the  
9 commissioner filed a crossmotion to affirm. (ECF No. 19).

10           In her R&R, Magistrate Judge Koppe recommends that plaintiff's motion to remand be  
11 denied and that the commissioner's crossmotion to affirm be granted, finding that the ALJ's  
12 credibility finding was supported by substantial evidence and was free of legal error. (ECF No.  
13 20).

14           This court "may accept, reject, or modify, in whole or in part, the findings or  
15 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects  
16 to a magistrate judge's report and recommendation, then the court is required to "make a de novo  
17 determination of those portions of the [report and recommendation] to which objection is made."  
18 28 U.S.C. § 636(b)(1).

19           Where a party fails to object, however, the court is not required to conduct "any review at  
20 all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149  
21 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
22 magistrate judge's report and recommendation where no objections have been filed. *See United*  
23 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review  
24 employed by the district court when reviewing a report and recommendation to which no  
25 objections were made).

26           Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine  
27 whether to adopt the recommendation of the magistrate judge. Upon reviewing the  
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1 recommendation and underlying briefs, as well as the underlying motions, this court finds good  
2 cause appears to ADOPT the magistrate judge's findings.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Magistrate Judge Koppe's  
5 report and recommendation (ECF No. 20) be, and the same hereby is, ADOPTED in its entirety.

6 IT IS FURTHER ORDERED that plaintiff Joyce Schwei's motion to remand (ECF No.  
7 17), be, and the same hereby is, DENIED.

8 IT IS FURTHER ORDERED that defendant Carolyn Colvin's crossmotion to affirm (ECF  
9 No. 19), be, and the same hereby is, GRANTED.

10 The clerk shall enter judgment accordingly and close the case.

11 DATED August 30, 2016.

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15 UNITED STATES DISTRICT JUDGE  
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